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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina[1]

Summary

In the present report, submitted in accordance with Human Rights Council resolution 16/14, the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, reflects on his tenure between 2008 and 2014. The report is organized as follows. Section II briefly outlines the main activities undertaken by the independent expert over the course of his mandate. Section III highlights the challenges faced by the Council in addressing sovereign debt as a human rights issue. Section IV briefly describes the constraints confronting the special procedures in carrying out their mandates, including insufficient resources. Section V is the conclusion.

[1] Late submission.

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I. Introduction

1. The mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights was established pursuant to Human Rights Council resolution 7/4 of 27 March 2008. By its resolution 16/14, the Council extended the mandate of the independent expert for a further period of three years. The present report is submitted in accordance with that resolution. Since this is his last thematic report to the Council, the independent expert briefly reflects on his tenure from 2008 to 2014.

2. The independent expert is grateful for the opportunity to work with Member States towards the realization of human rights for all – a key purpose of the United Nations. He takes this opportunity to thank the Human Rights Council for its support since his appointment. Nevertheless, he regrets the lack of support to the mandate by some members of the Council, notably the European Union and the United States of America. He hopes that these Member States will review their position and begin to cooperate fully with the mandate in line with their commitments in terms of General Assembly resolution 60/251.

II. Activities of the mandate

3. In his first report to the General Assembly (A/63/289, para. 27), the independent expert undertook to actively engage with all stakeholders – Governments, international organizations and civil society as spelled out in Human Rights Council resolution 7/4. To this end, he has consulted a broad range of stakeholders on a number of issues relating to his mandate, including notably in the process of elaborating the guiding principles on foreign debt and human rights which were endorsed by the Council in June 2012. He has also participated in workshops and meetings organized by civil society organizations and national human rights institutions, as well as contributed to the development of human rights standards by other special procedures. He takes this opportunity to thank the various organizations for their unstinting support to the mandate. It is impossible to mention them all, but he is very grateful in particular to the Asia Pacific Forum on Women, Law and Development; Center of Concern; Europe Third World Centre (CETIM); Committee for the Abolition of Third World Debt (CADTM); Jubilee Debt Campaign UK; Jubilee Australia; Jubilee USA; Jubilee South; European Network on Debt and Development (Eurodad); African Forum and Network on Debt and Development (AFRODAD); Latin American Network on Debt and Development (LATINDAD); Norwegian Coalition for Debt Cancellation (Slett U-Landsgjelda (SLUG)); International Network for Economic, Social and Cultural Rights (ESCR-Net); German Institute for Human Rights; and the European Group of National Human Rights Institutions.

4. Since his appointment in 2008, the independent expert has conducted several studies and presented his findings and recommendations to the Human Rights Council and the General Assembly addressing the following issues: the negative impact on human rights of the non-repatriation of funds of illicit origin in the countries of origin (A/HRC/22/42 and A/HRC/25/52); the global partnership for development – lessons for the post-2015 development framework (A/68/542); the human rights impact of international debt relief initiatives (A/HRC/23/37); the impact of sovereign debt and related economic reform policies, such as austerity measures, on women's human rights (A/67/304); export credit agencies and human rights (A/66/271); the need for policy coherence in the areas of international trade, finance and human rights (A/65/260 and Corr.1); the impact of "vulture

fund" litigation on debt relief and human rights (A/HRC/14/21); and the shared responsibility of creditors and debtors for "illegitimate debt" (A/64/289).

5. The independent expert has also conducted official visits to: Norway and Ecuador (A/HRC/14/21/Add.1), Australia and Solomon Islands (A/HRC/17/37/Add.1), Democratic Republic of the Congo (A/HRC/20/23/Add.2), Viet Nam (A/HRC/20/23/Add.1), Latvia (A/HRC/23/37/Add.1), Greece (A/HRC/25/50/Add.1), Japan (A/HRC/25/50/Add.2) and Argentina (A/HRC/25/50/Add.3). He is grateful to these States for their invitations and cooperation, and he hopes that they will remain engaged with the mandate for the purposes of the implementation of the recommendations contained in the respective mission reports. The independent expert further wishes to thank the Government of Egypt for its recent invitation to the mandate holder to visit the country.

III. Foreign debt as a human rights issue

6. The issue of foreign debt and its impact on the realization of human rights, particularly economic, social and cultural rights, has preoccupied the Human Rights Council and its predecessor, the Commission on Human Rights, for many years. However, its efforts (and those of the Commission) have been undermined by the differences concerning whether or not foreign debt should be treated as a human rights issue.[2] While acknowledging the potentially adverse impact of excessive debt burdens on development, the developed countries continue to argue that the Council was not the "appropriate" body to address the debt problem and that there were "other international fora which are much better equipped to deal with questions of foreign debt and debt forgiveness".[3]

7. The arguments advanced by the countries contesting the competence of the Human Rights Council to address sovereign debt as a human rights issue are untenable for a number of reasons. First, they reflect an incorrect understanding of international human rights law which envisages a holistic approach to the promotion and protection of human rights comprising both proactive and reactive elements. Thus, for example, paragraph 13 of the Vienna Declaration and Programme of Action calls upon States to "eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these

[2] See, for example, Commission on Human Rights resolution 2004/18 of 16 April 2004, adopted by a vote of 29 in favour (Argentina, Bhutan, Brazil, Burkina Faso, China, Cuba, Dominican Republic, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Honduras, India, Indonesia, Mauritania, Nepal, Nigeria, Pakistan, Philippines, Republic of the Congo, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Uganda and Zimbabwe), 14 against (Australia, Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Sweden, United Kingdom of Great Britain and Northern Ireland and United States) and 10 abstentions (Armenia, Bahrain, Chile, Costa Rica, Mexico, Paraguay, Peru, Qatar, Saudi Arabia and Ukraine); Human Rights Council decision 12/119, adopted on 12 October 2009 by a vote of 31 in favour (Angola, Argentina, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Kyrgyzstan, Madagascar, Mauritius, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa and Uruguay), 13 against (Belgium, Bosnia and Herzegovina, France, Hungary, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom and United States), and 2 abstentions (Mexico and Norway).

[3] "U.S. EOV on foreign debt as a human rights problem", explanation of vote by the United States, mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Human Rights Council, sixteenth session, Geneva, 23 March 2011. Available from www.geneva.usmission.gov/2011/03/23/eov-foreign-debt/. See also summary records of the Human Rights Council (21 March 2013).

rights". As several studies and the concluding observations of the various treaty bodies indicate, excessive foreign debt burdens constitute an obstacle to the enjoyment of human rights, particularly economic, social and cultural rights.

8. Secondly, these contentions are inconsistent with the spirit and purport of General Assembly resolution 60/251 establishing the Human Rights Council and the commitments which candidate States for membership of the Council make. In resolution 60/251, the Assembly recognized "the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization" and decided that the work of the Council should "be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development". It should also be noted that members of the Council are required to "fully cooperate with the Council".

9. Thirdly, as the report of the independent expert assessing the human rights impact of international debt relief initiatives shows (A/HRC/23/37), the "[r]ules other than human rights law"[4] and "other international fora which are much better equipped to deal with the questions of foreign debt and debt forgiveness" (presumably, the international financial institutions and the Paris Club[5]) have thus far failed to deliver an equitable and enduring solution to the sovereign debt problem. As creditors, these institutions cannot realistically be expected to focus on finding a solution to the debt crisis that prioritizes social and economic justice over debt repayment.[6] It is also notable that these institutions have neither a human rights mandate nor the expertise to properly factor human rights into their policies and programmes. Furthermore, the "[r]ules other than human rights law" afford no protection for States that face debt repayment difficulties as is the case with individuals and entities in comparable situations under national insolvency laws,[7] nor do they acknowledge or address the unjust or odious circumstances in which some of the sovereign debt was incurred.

10. Fourthly, the various United Nations human rights treaty bodies have recognized the adverse impacts of high debt burdens and related economic adjustment programmes on the realization of human rights, particularly economic, social and cultural rights.[8] They have

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[4] Ibid.

[5] The Paris Club is an informal group of creditor countries which serves as a forum for renegotiating official sector debts (that is, debts that have been issued, insured or guaranteed by creditor governments) owed to its members. Its permanent members are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, Russia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America. Other creditors are allowed to participate in negotiations on an ad hoc basis. See http://www.clubdeparis.org/en.

[6] For example, it has been asserted that the World Bank and the International Monetary Fund "helped to create the very situation of indebtedness that they themselves had responsibility for fixing". (Luke Fletcher and Adele Webb, *Alternatives to Debtors Prison: Developing a Framework for International Insolvency*," Policy Paper by Jubilee Australia (October 2011), p. 19, available from www.acfid.asn.au/resources-publications/publications/acfid-research-in-development-series.

[7] See, for example, K. Raffer, "Internationalizing US municipal insolvency: a fair, equitable, and efficient way to overcome a debt overhang", *Chicago Journal of International Law*, vol. 6, No. 1 (2005), pp. 361-379.

[8] See the following concluding observations, Committee on Economic, Social and Cultural Rights: E/C.12/1/Add.106 (Zambia); E/C.12/1/Add.78 (Benin); E/C.12/Add.71 (Algeria); E/C.12/1/Add.66 (Nepal); E/C.12/1/Add.63 (Syrian Arab Republic); E/C.12/1/Add.62 (Senegal); E/C.12/1/Add.60 (Bolivia, Plurinational State of); E/C.12/1/Add.57 (Honduras); E/C.12/1/Add.55 (Morocco);

also emphasized that the human rights obligations of States are relevant in the context of their external debt arrangements,[9] and have encouraged creditor countries to do all they can to ensure that the policies and decisions of the international financial institutions of which they are members are consistent with the international human rights obligations of States, for example, under the International Covenant on Economic, Social and Cultural Rights.[10] These observations do not appear to have been contested by any of the States which oppose the Human Rights Council's consideration of the issue.

11. Fifthly, the declarations, resolutions and decisions of major United Nations conferences and bodies have also confirmed the link between sovereign debt, human rights and development. These include the Rio Declaration on Environment and Development, which acknowledged the importance of reducing foreign debt particularly where it was aggravated by the net transfer of resources for the benefit of developed countries;[11] the Vienna Declaration and Programme of Action, which called upon the international community to make all efforts to help alleviate the external debt burden of developing countries in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people;[12] and the United Nations Millennium Declaration, which expressed a determination by Member States "to deal comprehensively and effectively with the debt problems of low and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term".[13]

E/C.12/1/Add.49 (Kyrgyzstan); and E/C.12/1/Add.48 (Sudan); Committee on the Rights of the Child: CRC/C/15/Add.218 (Madagascar); CRC/C/15/Add.204 (Eritrea); CRC/C/Add.207 (Sri Lanka); CRC/C/15/Add.197 (Republic of Korea); CRC/C/15/Add.193 (Burkina Faso); CRC/C/15/Add.190 (Sudan); CRC/C/15/Add.186 (Netherlands/Netherlands Antilles); CRC/C/15/Add.179 (Niger); CRC/C/15/Add.174 (Malawi); CRC/C/15/Add.172 (Mozambique); CRC/C/15/Add.160 (Kenya); CRC/C/15/Add.152 (Turkey); CRC/C/15/Add.138 (Central African Republic); CRC/C/15/Add.130 (Suriname); CRC/C/Add.124 (Georgia); and CRC/C/15/Add.115 (India); Committee on the Elimination of Discrimination against Women, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38* (Trinidad and Tobago); ibid., *Fifty-sixth Session, Supplement No. 38* (A/56/38), part one, para. 227 (Jamaica) and part two, paras. 161 (Guyana) and 227 (Netherlands); ibid., *Fifty-fifth Session, Supplement No. 38* (A/55/38), para. 44 (Cameroon). See also Committee on the Elimination of Discrimination against Women, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38* (A/57/38), para. 149.

[9] See, for example, E/C.12/1/Add.71, para. 43 (Algeria); E/C.12/1/Add.44, para. 28 (Egypt); E/C.12/1/Add.55. para. 38 (Morocco); and E/C.12/1/Add.57, para. 10 (Honduras).

[10] See, for example, E/C.12/1/Add.68 (Germany). See also E/C.12/1/Add.54, para. 31 (Belgium); E/C.12/1/Add.43, para. 20 (Italy); E/C.12/1/Add.70, para. 24 (Sweden); E/C.12/1/Add.72, para. 32 (France); E/C.12/1/Add.77, para. 37 (Ireland); and E/C.12/1/Add.79, para. 26 (United Kingdom). It is further notable that the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights deem a human rights violation of omission, "[t]he failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations" (para. 15 (j)).
The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights provide that: "The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively" (para. 19).

[11] See Report of the United Nations Conference on Sustainable Development (A/CONF.216/16), 20–22 June 2012, Rio de Janeiro, Brazil, para. 19.

[12] Paragraph 13 of the Vienna Declaration underscored the "need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights".

[13] General Assembly resolution 55/2 of 8 September 2000, para. 16. See also the Programme for the

12. Lastly, it is worth recalling as the independent expert on structural adjustment policies observed more than a decade ago, no single institution has a monopoly on how to establish a just and sustainable world order.

13. The link between sovereign debt and human rights is clear: excessive debt burdens reduce the maximum resources available to States for the fulfilment of human rights, particularly economic, social and cultural rights, and to establish and strengthen the institutions that promotes and protects civil and political rights.

14. The independent expert calls upon all Member States to support the work of the mandate to ensure that it can make an effective contribution to finding a lasting and just solution to a problem which has plagued developing countries for decades and now also affects developed countries. This would be in line with the obligations set out in General Assembly resolution 60/251.

IV. Support and resources

15. Inadequate funding and staffing support remain a key challenge for all the special procedures of the Human Rights Council, but more particularly for those mandates that do not receive any extrabudgetary resources, including the mandate of this independent expert. In addition, the funding cuts implemented across the United Nations over the last few years have serious implications for the effective and efficient implementation of the special procedures mandates and for the ability of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to enhance its support to the special procedures. At the same time, the Council has established a number of new mandates to address pressing human rights issues of global concern but without a corresponding increase in resources. This situation has resulted in an increased workload for mandate holders beyond that envisaged when they were appointed.

16. The arrangement where special procedures are expected to do their work outside their normal professional commitments, supported only by a single, often overburdened OHCHR staff member, is neither desirable nor helpful for the effective implementation of the work of the special procedures.

17. The independent expert is grateful for the professional support he has received from OHCHR over the course of his mandate despite the challenges, including lack of resources and staff, which it has and continues to face. However, he also considers that the level of administrative support provided by OHCHR could be improved through more transparency in relation to the relevant policies. For example, there are often issues concerning interpretation of policy provisions on entitlements which are in place to assist mandate holders effectively discharge their mandates. These include issues of travel and reimbursement of expenses. In other cases, there are no policies in writing – a situation which may lead, and has led, to inconsistent application of policies.

Further Implementation of Agenda 21, adopted by the General Assembly at its nineteenth special session, 23-28 June 1997 (resolution S/19-2, annex, paras. 20 and 82); Copenhagen Declaration on Social Development, adopted at the World Summit for Social Development, Copenhagen, 6–12 March 1995 (commitments 1 (k) and 7 (c)); Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna, on 25 June 1993, para. 12; Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, Beijing, 4–15 September 1995, para. 13; United Nations Millennium Declaration, adopted by the General Assembly in resolution 55/2, paras. 15 and 28; Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002 (A/CONF.199/20 and Corr.1, para. 89).

V. Conclusion

18. **Sovereign debt and its negative impact on the capacity of Governments, in developing and developed countries alike, to fulfil their human rights obligations, particularly those relating to economic, social and cultural rights, remain an important, if not very urgent, issue. The independent expert therefore urges the Human Rights Council to continue its engagement with the issue. However, for the Council's efforts in this regard to be successful, Member States need to be mindful of the principles elaborated in General Assembly resolution 60/251, particularly "the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization" and to consider this important issue accordingly.**